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question provided (Mo. LAWS, 1909, p. 119) that all prosecutions for violation of its terms should be brought by the State through its prosecuting attorney. As to whether this rendered void a prosecution in any other way under any other authority, the courts are in hopeless conflict. Some hold the remedies to be concurrent. *People v. Detroit White Lead Works*, 82 Mich. 471, 46 N. W. 735, 9 L. R. A. 722. *State ex rel. Reid v. Walbridge*, 199 Mo. 383, 24 S. W. 457, 41 Am. St. Rep. 663. It is noteworthy that, in practically all cases holding as above, there is some legislative authority in the municipality to regulate matters already the subject of state legislation. *COOLEY*, CONST. LIM., Ed. 4, p. 242 and cases cited. *DILLON*, MUN. CORP., Ed. 5, p. 966. On the other hand there is a respectable line of authority holding that although a given act was by a valid municipal ordinance made an offense against the corporation, the subsequent enactment by the general assembly of a statute making the identical act a crime or misdemeanor deprived the municipal authorities (they having no jurisdiction over state offenses) of the power to try and punish offenders for committing the act. *Strauss v. City of Waycross*, *supra*. *Ex parte Wickson* (Tex. Cr. App.) 47 S. W. 643. And when the state has assumed jurisdiction in the regulation of any matter, this ipso facto removes the same from municipal regulation or punishment. *Judy v. Lashley*, 50 W. Va. 628, 41 S. E. 197, 57 L. R. A. 413. *Bear v. City of Cedar Rapids*, 147 Iowa 341, 126 N. W. 324, 27 L. R. A. (N. S.) 1150. Whether in the principal case the charter of the City of St. Louis granted the municipality power to regulate matters after they became the subject of state regulation, does not appear from the report of the case.

SALES—INSPECTION BY VENDEE AS AFFECTING IMPLIED WARRANTY OF TITLE.—Defendant sold certain barrels of mackerel to plaintiff. One of plaintiff's employes, McKinnon, visited defendant's place of business and there had opportunity to inspect the shipment, but relying on the defendant's description, made a very superficial examination. The sale was completed by telegram, and the fish were shipped. Plaintiff re-shipped them to a Boston agency for re-sale, from which re-sales several barrels were returned, the claim being made that the mackerel in the middle of the barrels were rusty. Examination proved this to be the fact and plaintiff sued for breach of warranty. On trial plaintiff offered evidence of a custom in the fish trade that when a party purchases a lot of mackerel he is supposed to receive "clear" fish. This was admitted over the objection of defendant, who claimed that this was a sale of specific barrels which plaintiff inspected, and that having received those barrels this is an end to his case. The overruling of the defendant's objection was assigned as error. *Held*, that in the sale of specific goods as goods of a specified description, the description amounts to a warranty that they are as described. It was competent for the plaintiff to prove that by custom the word "mackerel" had a clearly defined trade meaning, *i. e.* "clear mackerel." And the fact that the specific goods were open to inspection and actually inspected by the purchaser cannot deprive him of his right to rely on such a description as a warranty, if the defect was such a one as would not be and was not detected. *Procter et al. v. Atlantic Fish Co. Ltd.* (Mass. 1911) 94 N. E. 281.

At first blush it would seem that here the court had overstepped the general rule that where inspection is had at the time of making the bargain, the inspection precludes the existence of any implied warranty of quality. *Barnard v. Kellogg*, 10 Wall. 383; *Dorsey v. Watkins*, 151 Fed. 340; *White v. Oakes*, 88 Me. 367, 34 Atl. 175; *Farrell v. Manhattan Market Co.*, 198 Mass. 271. Here there was not only opportunity for inspection, but there was inspection in fact, of the specific goods delivered, and the defect was not necessarily hard to discover. But upon closer scrutiny it will be seen that the case is directly in line with the more modern trend of authority tending to give efficacy to the description of the goods given by the vendor, and relied upon by the vendee, and abrogating the doctrine of caveat emptor. *WILLISTON, SALES*, p. 300 et seq. At common law there was no implied warranty of quality originally. *Parkinson v. Lee*, 2 East 314. But the doctrine has grown until now by the Uniform Sales Act, passed by Massachusetts in 1908, Art. 3, § 15, C. 237 of the Acts and Resolves of Massachusetts, it is provided that if the buyer examines the goods there is no implied warranty as regards defects *which such examination ought to have revealed*. It will be noted that the old rule is changed by the clause "which such examination ought to have revealed." Thereby is added to the question of whether the vendee relied upon the description of the vendor, the question of the nature of the defect. Here it is clear that the vendee not only relied upon the description as is shown by his making but a superficial examination, but that the defect was one which no ordinary inspection would reveal; thereby bringing the case completely within the majority rule instead of allowing it to stand as an exception.

**WILLS—TESTAMENTARY TRUSTS—INCOME—CAPITAL.**—Testator gave his residuary estate to trustees to manage and to pay the "interest or earnings" to his children during their lifetime, with gift over after their respective deaths. The trustees held stock in a corporation organized to conduct a lumbering business and buy and sell real estate. The investment by testator and trustees had amounted to \$196,000 when a special dividend of \$676,000 was declared upon the stock, representing proceeds from a sale of part of the timber land possessed by the corporation. *Held*, that this dividend constituted part of the *corpus* of the trust and was not income available to the life tenants. *Ex parte Humbird* (Md. 1911) 80 Atl. 209.

The court declared that the mere form of the dividend in no way controlled its disposal, 10 Cvc. 559, *Thomas v. Gregg*, 78 Md. 545, 28 Atl. 565, 44 Am. St. Rep. 310. In *Thomas v. Gregg, supra*, which was expressly affirmed, the Pennsylvania doctrine, that the origin and character of the fund out of which the dividend was paid will be taken into consideration, and if it represents earnings it is income and that part of the earnings that have accumulated during the existence of the trust fund belongs to the life beneficiaries, but if the dividend represents an appropriation of capital it belongs to the *corpus* of the estate, was adopted. *Smith's Estate*, 140 Pa. 344. This differs from the Massachusetts rule, namely, that a cash dividend is income and a stock dividend capital, and from the New York decisions which give that portion of the income earned prior to the establishment of the trust fund to the